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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,340	07/03/2003	Louis Brown Abrams	4811-16	7865
22442	7590	05/18/2006		
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/614,340

Applicant(s)

ABRAMS, LOUIS BROWN

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-65 is/are pending in the application.  
4a) Of the above claim(s) 1-3, 11-26 and 42-65 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 4-10 and 27-41 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/06, 5/05, 12/04, 9/04, 7/04, 6/04, 5/04, 3/04, 1/22/04, 1/12/04, 11/03  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the species of claims 4-10 and 27-41 in the reply filed on February 28, 2006, is acknowledged. Claims 1-3, 11-26, and 42-65 are withdrawn as non-elected.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 27, 28, 33, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 4 is indefinite for the lack of antecedent basis for "the maximum flock temperature" since a flocked substrate is not claimed. Claims 27, 28, 33, and 35 are similarly rejected.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

Art Unit: 1771

*Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 4-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14, 16, 19, and 20 of copending Application No. 11/036887 (US 2005/0266204). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been readily obvious to one of ordinary skill in the art to employ bicomponent fibers for the flock fibers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 4-9, 34, 35, 38, and 40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-19 and 24 of copending Application No. 11/139,439 (US 2005/0268407). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been readily obvious to one of ordinary skill in the art to employ bicomponent fibers for the flock fibers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claim 4 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/613,982 (US

Art Unit: 1771

2004/0050482). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been readily obvious to one of ordinary skill in the art to mold the flocked substrate of the present invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-10 and 27-41 are rejected under 35 U.S.C. 103(a) as being obvious over US 6,977,023 issued to Abrams.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in

Art Unit: 1771

the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Abrams discloses a decorative flocked transfer (abstract), wherein said flock transfer may dyed with a sublimation process (col. 14, lines 5-26). The transfer comprises a primary carrier, a first release adhesive, a permanent adhesive, a flocked layer, a second release adhesive, and a secondary carrier (claim 31). Abrams teaches the flock fiber may be polyester (col. 9, lines 39-41).

Thus, Abrams teaches the claimed invention with the exception that the polyester is as presently recited. However, it would have been readily obvious to one of ordinary skill in the art to select a polyester having the claimed formula (i.e., poly(cyclohexylene-dimethylene terephthalate or PCT) since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. PCT is known to have good resiliency and thermal stability. As such, it would have been obvious to select said PCT for the polyester of the Abrams invention.

With respect to the recited heat-set, drawing, and flock temperatures, it is argued that said temperatures would be readily obvious to one of ordinary skill in the art. Said temperatures could readily be determined by one skilled in the art based upon the materials selected for the flock transfer of Abrams.

Regarding the claimed properties (i.e., percent elongation, compression recovery, deflection temperature, shrinkage, percent crystallization, melting point, and glass transition

Art Unit: 1771

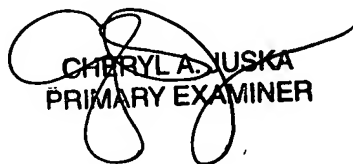
temperature), it is argued that said properties would be inherent to the flock fibers comprising PCT. Like materials cannot have mutually exclusive properties. The burden is upon applicant to prove otherwise. Therefore, claims 4-10 and 27-41 are rejected as being obvious over the cited prior art.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
May 15, 2006